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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:  
**MARY K. SMITH**  
**921 Drake Avenue**  
**Marin City, CA 94965**  
  
**Pharmacy Technician Registration No.**  
**TCH 60321**  
  
Respondent.

Case No. 3439

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 29, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3439 against Mary K. Smith (Respondent) before the Board of Pharmacy.

2. On or about January 11, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 60321 to Respondent. The Registration was in full force and effect at all times relevant to the charges brought herein, and will expire on September 30, 2010, if not renewed.

3. On or about April 2, 2010, Fe M. Domingo, an employee of the Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 3439, a Statement to Respondent, two copies of a form Notice of Defense, a Request for Discovery, and copies of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with

1 the Board: 921 Drake Avenue, Marin City, CA 94965. A copy of the Accusation is attached as  
2 exhibit A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c).

5 5. Government Code section 11506 states, in pertinent part:

6 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a  
7 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation  
8 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's  
9 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
11 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3439.

12 7. California Government Code section 11520 states, in pertinent part:

13 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
14 agency may take action based upon the respondent's express admissions or upon other evidence  
15 and affidavits may be used as evidence without any notice to respondent.

16 8. Pursuant to its authority under Government Code section 11520, the Board finds  
17 Respondent is in default. The Board will take action without further hearing and, based on the  
18 evidence on file herein, finds that the allegations in Accusation No. 3439 are true.

19 9. The total costs for investigation and enforcement in connection with the Accusation  
20 are \$2,132.50 as of April 30, 2010.

21  
22 DETERMINATION OF ISSUES

23 1. Based on the foregoing findings of fact, Respondent Mary K. Smith has subjected her  
24 Pharmacy Technician Registration No. TCH 60321 to discipline.

25 2. A copy of the Accusation is attached.

26 3. The agency has jurisdiction to adjudicate this case by default.

27 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
28 Registration based upon the following violations alleged in the Accusation:

1 a. In violation of Business and Professions Code section 4301(f), Respondent engaged  
2 in numerous acts of moral turpitude, dishonesty, fraud, deceit or corruption between in or about  
3 March 2008 and in or about February 2009, when she diverted/stole and/or aided or abetted her  
4 accomplice to divert/steal, controlled substances and dangerous drugs from a pharmacy employer,  
5 including **Norco**, **Vicodin ES**, or other **Hydrocodone** products (at least 800 tablets), **Phenergan/**  
6 **Promethazine with Codeine** (at least 12 one-pint bottles), and/or **Viagra** (quantity unknown),  
7 for purposes of personal use, furnishing/giving away to others, and/or street sale;

8 b. In violation of Business and Professions Code sections 4301(h), Respondent, during  
9 the same period described in paragraph 4.a., administered one or more controlled substance to  
10 herself, including **Promethazine with Codeine** products;

11 c. In violation of Business and Professions Code section 4301 (j) and/or (o) and/or  
12 section 4059, and/or Health and Safety Code section 11170, Respondent, during the same period  
13 described in paragraph 4.a., furnished to herself or another without a valid prescription, and/or  
14 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance;

15 d. In violation of Business and Professions Code section 4301 (j) and/or (o) and/or  
16 section 4060, and/or Health and Safety Code section 11350, Respondent, during the same period  
17 and as described in paragraph 4.a., possessed, conspired to possess, and/or assisted in or abetted  
18 possession of, a controlled substance, without a prescription;

19 e. In violation of Business and Professions Code section 4301 (j) and/or (o), and/or  
20 Health and Safety Code section 11173 (a), Respondent, during the same period and as described  
21 in paragraph 4.a., obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
22 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact;

23 f. In violation of Business and Professions Code section 4301 (j) and/or (o), and/or  
24 Health and Safety Code section 11351, Respondent, during the same period and as described in  
25 paragraph 4.a., possessed or purchased for sale, conspired to possess or purchase for sale, and/or  
26 assisted in or abetted the possession or purchase for sale, of a controlled substance;

27 g. In violation of Business and Professions Code section 4301, Respondent, as described  
28 in paragraph 4, subparts a. through f., engaged in unprofessional conduct.

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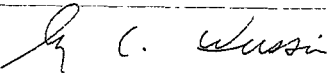
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 60321, heretofore issued to Respondent Mary K. Smith, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 5, 2010.

It is so ORDERED July 6, 2010.



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STANLEY C. WEISSER, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

Attachment: Exhibit A: Accusation No. 3439

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**Exhibit A**  
**Accusation No. 3439**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:  
11 **MARY K. SMITH**  
12 **921 Drake Avenue**  
13 **Marin City, CA 94965**  
14 **Pharmacy Technician License No. TCH 60321**  
15 Respondent.

Case No. 3439

**A C C U S A T I O N**

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
20 2. On or about January 11, 2005, the Board of Pharmacy issued Pharmacy Technician  
21 License Number TCH 60321 to Mary K. Smith (Respondent). The Pharmacy Technician License  
22 was in full force and effect at all times relevant to the charges brought herein and will expire on  
23 September 30, 2010, unless renewed.

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
26 Consumer Affairs, under the authority of the following laws. All section references are to the  
27 Business and Professions Code (Code) unless otherwise indicated.

28 ///

1           4. Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.].

4           5. Section 4300(a) of the Code provides that every license issued by the Board may be  
5 suspended or revoked.

6           6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
8 disciplinary action during the period within which the license may be renewed, restored, reissued  
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
10 renewed within three years following its expiration may not be renewed, restored, or reinstated  
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of  
12 the Code provides that any other license issued by the Board may be canceled by the Board if not  
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be  
14 reissued but will instead require a new application to seek reissuance.

15   STATUTORY AND REGULATORY PROVISIONS

16           7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
17 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but  
18 not be limited to, any of the following:

19           (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
20 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
21 whether the act is a felony or misdemeanor or not.

22           (h) The administering to oneself, of any controlled substance, or the use of any dangerous  
23 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
24 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
25 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
26 practice authorized by the license.

27           (j) The violation of any of the statutes of this state, of any other state, or of the United  
28 States regulating controlled substances and dangerous drugs.

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
3 federal and state laws and regulations governing pharmacy, including regulations established by  
4 the board or by any other state or federal regulatory agency.

5 8. California Code of Regulations, title 16, section 1770, states:

6 "For the purpose of denial, suspension, or revocation of a personal or facility license  
7 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
8 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
9 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
10 licensee or registrant to perform the functions authorized by her license or registration in a  
11 manner consistent with the public health, safety, or welfare."

12 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
13 drug or dangerous device except upon the prescription of an authorized prescriber.

14 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
15 controlled substance, except that furnished upon a valid prescription/drug order.

16 11. Health and Safety Code section 11170 provides that no person shall prescribe,  
17 administer, or furnish a controlled substance for himself or herself.

18 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
19 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
20 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
21 or subterfuge; or (2) by the concealment of a material fact.

22 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
23 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
24 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

25 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess  
26 for sale or purchase for sale any controlled substance classified in Schedule III, IV, or V (Health  
27 and Safety Code sections 11056, 11057, or 11058) which is a narcotic drug.

28 ///



1 COST RECOVERY

2 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
4 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

5 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

6 16. Section 4021 of the Code states:

7 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
8 11053) of Division 10 of the Health and Safety Code.”

9 17. Section 4022 of the Code states, in pertinent part:

10 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
11 except veterinary drugs that are labeled as such, and includes the following:

12 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
13 prescription,’ ‘Rx only,’ or words of similar import.

14 ...

15 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
16 prescription or furnished pursuant to Section 4006.”

17 18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for  
18 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III  
19 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
20 drug as designated by Business and Professions Code section 4022. The varying compounds are  
21 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

22 19. **Phenergan with Codeine** is a brand name for a compound consisting of the  
23 antihistamine **promethazine**, a dangerous drug as designated by Business and Professions Code  
24 section 4022, and **codeine**, a Schedule V controlled substance as designated by Health and Safety  
25 Code section 11058 and a dangerous drug as designated by Business and Professions Code  
26 section 4022. This drug is also known generically as **Promethazine with Codeine**. It is an  
27 antihistamine/antitussive, narcotic analgesic, and sleep aid.

28 ///

1 20. **Viagra** is a brand name for **sildenafil**, a dangerous drug as designated by Business  
2 and Professions Code section 4022, intended as a treatment for erectile dysfunction.

3 FACTUAL BACKGROUND

4 21. From an unknown start date until on or about February 20, 2009, Respondent was  
5 employed as a pharmacy technician at a Kaiser Foundation Health Plan Pharmacy in San Rafael,  
6 CA (# 396; PHY 44385), where she had access to controlled substances and dangerous drugs.

7 22. Between in or about March 2008 and in or about February 2009, Respondent used her  
8 access to divert/steal controlled substances and dangerous drugs, including **Norco**, **Vicodin ES**,  
9 or other **Hydrocodone** products, **Phenergan/Promethazine with Codeine**, and/or **Viagra**.

10 23. The exact number of instances of diversion/theft by Respondent, and the full quantity  
11 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in  
12 the course of an internal investigation conducted by Kaiser, Respondent admitted to a course of  
13 conduct of diverting/stealing controlled substances and dangerous drugs from the pharmacy that  
14 included at least two instances of taking six (6) one pint bottles of **Promethazine with Codeine**  
15 syrup from the pharmacy, and at least one instance (on February 5, 2009) of taking up to eight (8)  
16 bottles (of 100 tablets) of **Vicodin ES**. Respondent further admitted to taking the **Promethazine**  
17 **with Codeine** from the pharmacy for purposes of self-use and for furnishing to her boyfriend for  
18 self-use, in the absence of valid prescriptions. Respondent further admitted to actually using the  
19 **Promethazine with Codeine** without a valid prescription. Respondent further admitted to taking  
20 the **Vicodin ES** for purposes of street sale/resale for monetary gain. Lastly, Respondent admitted  
21 to engaging another Kaiser pharmacy technician (A.M.)<sup>1</sup> as an accomplice for her diversion/theft,  
22 and that on at least one occasion (February 5, 2009) accomplice A.M. assisted her by ordering the  
23 stolen drugs into the stock of the pharmacy. A.M. admitted to procuring on Respondent's behalf,  
24 and/or assisting Respondent in taking, significant quantities (whole bottles and/or containers) of  
25 the controlled substances **Norco** (or its generic equivalent), **Vicodin ES** (or its generic  
26 equivalent), and **Phenergan/Promethazine with Codeine**, and the dangerous drug **Viagra**.

27  
28 <sup>1</sup> The full name of the accomplice will be revealed during the discovery process.

1 24. A subsequent verification audit of the controlled substances stock of the pharmacy by  
2 which Respondent was employed (Kaiser Foundation Health Plan Pharmacy in San Rafael, CA [#  
3 396; PHY 44385]), for the period from March 2008 to February 2009 could not account for the  
4 controlled substance losses of approximately 35,155 dosage units (tablets) of **Hydrocodone with**  
5 **APAP 10/325** (generic **Norco**), approximately 2,690 dosage units (tablets) of **Vicodin ES**, and  
6 40,591 mls (86 one-pint bottles) of **Promethazine with Codeine** syrup.  
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9 FIRST CAUSE FOR DISCIPLINE

10 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

11 25. Respondent is subject to discipline under section 4301(f) of the Code, in that  
12 Respondent, as described in paragraphs 21 to 24 above, committed numerous acts involving  
13 moral turpitude, dishonesty, fraud, deceit, or corruption.  
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16 SECOND CAUSE FOR DISCIPLINE

17 (Self-Administration of Controlled Substance(s))

18 26. Respondent is subject to discipline under section 4301(h) of the Code, in that  
19 Respondent, as described in paragraphs 21 to 24 above, administered one or more controlled  
20 substances to herself, including **Promethazine with Codeine** products.  
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23 THIRD CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance(s))

25 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
26 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described  
27 in paragraphs 21 to 24 above, furnished to herself or another without a valid prescription, and/or  
28 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance(s))

3 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
5 in paragraphs 21 to 24 above, possessed, conspired to possess, and/or assisted in or abetted  
6 possession of, a controlled substance, without a prescription.

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9 FIFTH CAUSE FOR DISCIPLINE

10 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

11 29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
12 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
13 21 to 24 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
14 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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17 SIXTH CAUSE FOR DISCIPLINE

18 (Possession or Purchase of Controlled Substance(s) for Sale)

19 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
20 and/or Health and Safety Code section 11351, in that Respondent, as described in paragraphs 21  
21 to 24 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or  
22 assisted in or abetted the possession or purchase for sale, of a controlled substance.

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25 SEVENTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

27 31. Respondent is subject to discipline under section 4301 of the Code in that  
28 Respondent, as described in paragraphs 21 to 30 above, engaged in unprofessional conduct.

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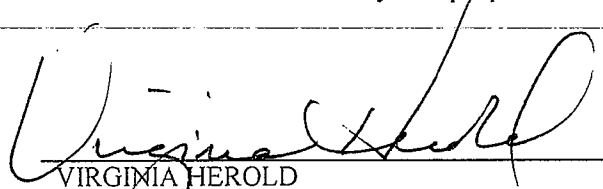
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 60321, issued to Mary K. Smith (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED:

3/29/10



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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